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5 UNITED STATES DISTRICT COURT
6 WESTERN DISTRICT OF WASHINGTON
7 AT TACOMA

8 STEVE YAROSLASKI,
9 Plaintiff,
10 v.
11 COWLITZ COUNTY, et al.,
12 Defendants.

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8 CASE NO. C14-5181 BHS
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10 ORDER GRANTING IN PART
11 DEFENDANTS' MOTIONS FOR
12 SUMMARY JUDGMENT

13 This matter comes before the Court on Defendants Cowlitz County Humane
14 Society, Kevin Waldo, Mavis Rust, and Mike Nicholson's motion for summary judgment
15 (Dkt. 15) and Defendants Cowlitz County and Cory Robinson's motion for summary
16 judgment (Dkt. 16). The Court has considered the pleadings filed in support of and in
17 opposition to the motions, oral argument of counsel, and the remainder of the file and
18 hereby grants the motions in part for the reasons stated herein.

19 **I. PROCEDURAL HISTORY**

20 On March 3, 2014, Plaintiff Steve Yaroslaski ("Yaroslaski") filed a complaint
21 against Defendants Cowlitz County ("County"), Cowlitz County Humane Society
22 ("Humane Society"), Kevin Waldo, Mavis Rust, Mike Nicholson ("Humane Society

1 Officers”), and Cory Robinson (“Deputy Robinson”) (collectively “Defendants”). Dkt. 1.

2 Yaroslaski asserts numerous causes of action under federal and state law. *Id.*

3 On March 11, 2015, Defendants filed motions for summary judgment. Dkts. 15,

4 16. On April 1, 2015, Yaroslaski responded. Dkt. 18. On April 10, 2015, Defendants

5 replied. Dkts. 20, 21.

6 On May 15, 2015, the Court granted the motions in part, reserved ruling in part,
7 and set a hearing for oral argument. Dkt. 26. In relevant part, the Court granted the
8 motions on Yaroslaski’s due process claim and reserved ruling on Yaroslaski’s civil
9 rights claim. *Id.*

10 **II. FACTUAL BACKGROUND**

11 The Humane Society has contracted with Cowlitz County to enforce and
12 administer the animal control laws of Washington State and the County in the
13 unincorporated areas of the County. Dkt. 15-2, Declaration of Patrick Pearce (“Pearce
14 Dec.”), Ex. A. On March 1, 2011, the Humane Society received a complaint from an
15 individual who expressed concerns about the well-being of at least twenty dogs at
16 Yaroslaski’s property that were caged outside in cold conditions. *Id.*, Ex. J. Humane
17 Society Officers Nicholson and Waldo responded to the complaint. *Id.*

18 Upon approaching the house on the property, the officers observed three chain-
19 link kennels on the left side of the house. The officers contacted Yaroslaski, informed
20 him about the complaint, and asked to look around the property. The parties dispute
21 whether Yaroslaski consented to a search of the property, but, for the purposes of this
22 motion, the Court will accept Yaroslaski’s contention that he asked the officers if they

1 had a warrant to search the property. Dkt. 19, Affidavit of Derek Smith (“Smith Aff.”),
2 Ex. 5, Deposition of Steven Yaroslaski (“Yaroslaski Dep.”) at 38 (deposition pagination).
3 Yaroslaski also contends that Officer Nicholson informed Yaroslaski that he didn’t need
4 a warrant, and, based on that assertion, Yaroslaski allowed the officers to search the
5 property. *Id.*

6 What is not in dispute is the condition of the kennels. In his deposition,
7 Yaroslaski testified as follows:

8 Basically I believe I said that the kennels were a mess. We had
9 snow on the ground, and the waterlines were frozen. I explained why they
10 were a mess. I said that I -- because of the weather, I haven’t had a chance
11 to get them cleaned out right and repaired. I explained that the roof started
12 leaking with the snow. We had a foot of snow. And then the mud started
13 coming down, and I explained that to them.

14 They informed me that the kennels are in bad shape.
15 And I says, “I know that.”

16 *Id.* at 40. On this issue, Officer Nicholson’s report provides as follows:

17 During our walk through of Steven’s property we counted 42 dogs
18 and puppies. 3 dogs were Stevens that he kept in his house as pets.

19 Livestock on the property cows, calves, chickens, and pigs had
20 adequate shelter, food, and all appeared healthy looking.

21 The remaining 39 dogs were kept in unsanitary conditions living in
22 mud and feces, along with unkept housing.

23 Pearce Dec., Ex. J.

24 At the conclusion of the walk-through, the officers issued Yaroslaski a citation and
25 a warning. Officer Nicholson’s report provides as follows:

26 At this time I explained to Steven that he would be cited for running
27 a kennel operation as a breeder of 10 plus dogs without first obtaining a
28 permit per Cowlitz County Code, and that he was told to do so in 2008
29 when officer McCuin visited his property, and that I would be back within
30 one month.

1 *Id.* Yaroslaski testified that Officer Nicholson represented that the officers “would work
2 with me and that I would have a month to get everything in order. He said he’d be back
3 within the month to double-check everything; and that if everything was in order, that
4 they’d work with us and we’d be fine.” Yaroslaski Dep. at 40.

5 On March 2, 2011, Officer Nicholson reviewed the photographs he took at
6 Yaroslaski’s property and reviewed relevant county codes and state statutes. Officer
7 Nicholson concluded that Yaroslaski’s dogs may have met the definition of “mistreated”
8 under the County Code. Based on that conclusion, he determined that the animals should
9 be impounded and removed from the property.

10 On March 3, 2011, Officer Nicholson organized an impound operation. Officer
11 Nicholson contacted the Cowlitz County Sheriff to ask for assistance in case Yaroslaski
12 acted violently during the impound. Cowlitz County Sheriff’s Deputy Robinson was
13 dispatched to accompany Humane Society Officers Nicholson, Waldo, and Rust. The
14 officers went to the property and informed Yaroslaski that they were there to impound the
15 dogs. Yaroslaski asked the officers if they needed a warrant and that Deputy Robinson
16 informed Yaroslaski that they didn’t need a warrant because of the complaints.
17 Yaroslaski Dep. at 46. The Humane Society Officers impounded the dogs and
18 transported them to the Humane Society. Before leaving the property, Officer Nicholson
19 issued Yaroslaski a report of impoundment which provided as follows:

20 Your dogs have been impounded per [Cowlitz County Code
21 (“CCC”)] 6.12.220 section A. Animal control Authority found reason of
any animal that is subject to any mistreatment described in CCC 6.12.060.
22 And failure to register a kennel permit per CCC 6.12.150 and violating

1 CCC 6.12.144, CCC 6.12.145, and CCC 6.12.146 specific condition to
2 operate a kennel.

3 You have 72 hours to be in compliance with Cowlitz County Code
4 to operate a kennel as a dog breeder and pass inspection for the Humane
5 Society to return your dogs.

6 Smith Aff., Ex. 7. Yaroslaski, however, contends that he “asked Nicholson whether there
7 was any way that he was getting his dogs back and he was told no.” Dkt. 18 at 5.¹

8 After the officers transported the animals to the Humane Society’s building, the
9 staff tagged and checked the health of the dogs. Officer Nicholson’s report provides as
10 follows:

11 After reviewing medical records from staff and reviewing photos of
12 all dogs conditions of tight collars embedded in some dogs necks, swollen
feet, flea infestation, ear infections, overgrown toenails, dental disease,
matted coats, skin infections, vaginal infection, coats covered in mud and
feces, missing teeth, dehydration, and pregnant and documentation of dogs
suffering due to the conditions I will be forwarding a full report to the
Cowlitz County prosecutors Office to file animal Cruelty Charges 2nd
Degree State RCW 16.52.207.

13 Pearce Dec., Ex. J. Charges were brought and dismissed against Yaroslaski.

14 III. DISCUSSION

15 A. Summary Judgment Standard

16 Summary judgment is proper only if the pleadings, the discovery and disclosure
17 materials on file, and any affidavits show that there is no genuine issue as to any material
18 fact and that the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c).
19 The moving party is entitled to judgment as a matter of law when the nonmoving party

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22 ¹ Yaroslaski cited page 48 of his deposition for these facts, but failed to submit that specific page in the record. See Yaroslaski Dep.

1 fails to make a sufficient showing on an essential element of a claim in the case on which
2 the nonmoving party has the burden of proof. *Celotex Corp. v. Catrett*, 477 U.S. 317,
3 323 (1986). There is no genuine issue of fact for trial where the record, taken as a whole,
4 could not lead a rational trier of fact to find for the nonmoving party. *Matsushita Elec.*
5 *Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986) (nonmoving party must
6 present specific, significant probative evidence, not simply “some metaphysical doubt”);
7 *see also* Fed. R. Civ. P. 56(e). Conversely, a genuine dispute over a material fact exists if
8 there is sufficient evidence supporting the claimed factual dispute, requiring a judge or
9 jury to resolve the differing versions of the truth. *Anderson v. Liberty Lobby, Inc.*, 477
10 U.S. 242, 253 (1986); *T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d
11 626, 630 (9th Cir. 1987).

12 The determination of the existence of a material fact is often a close question. The
13 Court must consider the substantive evidentiary burden that the nonmoving party must
14 meet at trial—e.g., a preponderance of the evidence in most civil cases. *Anderson*, 477
15 U.S. at 254; *T.W. Elec. Serv., Inc.*, 809 F.2d at 630. The Court must resolve any factual
16 issues of controversy in favor of the nonmoving party only when the facts specifically
17 attested by that party contradict facts specifically attested by the moving party. The
18 nonmoving party may not merely state that it will discredit the moving party's evidence
19 at trial, in the hopes that evidence can be developed at trial to support the claim. *T.W.*
20 *Elec. Serv., Inc.*, 809 F.2d at 630 (relying on *Anderson*, 477 U.S. at 255). Conclusory,
21 nonspecific statements in affidavits are not sufficient, and missing facts will not be
22 presumed. *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 888–89 (1990).

1 **B. 42 U.S.C. § 1983**

2 Section 1983 is a procedural device for enforcing constitutional provisions and
3 federal statutes; the section does not create or afford substantive rights. *Crumpton v.*
4 *Gates*, 947 F.2d 1418, 1420 (9th Cir. 1991). In order to state a claim under section 1983,
5 a plaintiff must demonstrate that (1) the conduct complained of was committed by a
6 person acting under color of state law and that (2) the conduct deprived a person of a
7 right, privilege, or immunity secured by the Constitution or by the laws of the United
8 States. *Parratt v. Taylor*, 451 U.S. 527, 535 (1981), *overruled on other grounds by*
9 *Daniels v. Williams*, 474 U.S. 327 (1986). In order to establish a cause of action for
10 conspiracy under section 1983, a plaintiff must show: “(1) the existence of an express or
11 implied agreement among the defendant officers to deprive him of his constitutional
12 rights, and (2) an actual deprivation of those rights resulting from that agreement.”
13 *Avalos v. Baca*, 596 F.3d 583, 592 (9th Cir. 2010).

14 In this case, Yaroslaski contends that the officers conspired to seize his property
15 without a warrant in violation of the Fourth Amendment. Dkt. 18 at 6–11. With regard
16 to the existence of an express or implied agreement, Yaroslaski has submitted evidence to
17 suggest that Defendants met before going to Yaroslaski’s property and discussed
18 removing Yaroslaski’s dogs from the property. This evidence shows at the very least an
19 implied agreement to remove Yaroslaski’s property without a warrant. Therefore, the
20 Court concludes that questions of fact exist on this issue.

21 With regard to the second element, the issue is whether entry onto Yaroslaski’s
22 property and impounding Yaroslaski’s dogs was a violation of Yaroslaski’s rights. At

1 this point, the Court is relying solely on Yaroslaski's brief for the underlying factual basis
2 for his Fourth Amendment claim. This is very important for the analysis because
3 Yaroslaski only cites facts regarding the day of impoundment, the second trip to his
4 property. Dkt. 18 at 6–7 (“Factual Basis of Claim One”). On that day, the officers had
5 evidence that not only were the dogs in plain view in the front of Yaroslaski’s property
6 being mistreated, but also that dogs in other areas of the property were also being
7 mistreated. As such, Yaroslaski’s claim is limited to the seizure of the dogs based on the
8 evidence within the officers’ possession on March 1, 2011.

9 Defendants first contend that there was probable cause to seize the dogs. Probable
10 cause, however, is only relevant if the police officer was ordering the seizure of the dogs
11 based on a possible criminal law violation. While this matter would have been easily
12 resolved if this was the only factual scenario before the Court, there are facts that, when
13 taken in the light most favorable to Yaroslaski, show that the police officer accompanied
14 the Humane Society Officers for the sole purpose of protection in case Yaroslaski
15 became violent during the seizure. In other words, the police officer was not ordering the
16 seizure of the dogs under his powers to enforce criminal laws. Therefore, the existence
17 of probable cause does not resolve the factual scenario in which the Humane Society
18 Officers impounded the dogs.

19 Absent police powers, the Humane Society Officers rely on the local ordinances to
20 justify their actions. Specifically, the Cowlitz County Code (“CCC”) states that
21 mistreated animals are subject to impoundment. CCC 6.12.220(A)(2). Mistreatment
22 includes causing or allowing, “either intentionally or negligently, any animal to endure

1 pain, suffering or injury; or, to fail to attempt to alleviate pain, suffering or injury he or
2 she so causes to any animal” and neglecting “to provide adequate daily rations of food,
3 water or shelter for any animal he or she owns.” CCC 6.12.060(B)–(C). While there
4 may exist questions of fact whether the animals were in immediate life threatening
5 conditions, it is undisputed that the animals were at least being mistreated as defined in
6 the CCC. Therefore, the Court concludes that the Humane Society Officers were entitled
7 to impound the animals pursuant to the CCC.

8 Yaroslaski, however, argues that, regardless of the local ordinances, the officers
9 violated his constitutional rights. The Court need not address this issue because “[w]hen
10 a city council enacts an ordinance, officers are entitled to assume that the ordinance is a
11 valid and constitutional exercise of authority.” *Acosta v. City of Costa Mesa*, 718 F.3d
12 800, 823-24 (9th Cir. 2013). Moreover, “[i]f an officer reasonably relies on the council’s
13 duly enacted ordinance, then that officer is entitled to qualified immunity.” *Id.* at 824.
14 Under this precedent, the Humane Society Officers reasonably relied on the CCC and are
15 entitled to qualified immunity. Yaroslaski cites no authority to the contrary and fails to
16 meet his burden on this issue. *See Purvis v. Oest*, 614 F.3d 713, 717 (7th Cir. 2010) *cert.*
17 *denied*, 131 S. Ct. 2991 (2011) (“Although qualified immunity is an affirmative defense,
18 once raised, it becomes the plaintiff’s burden to defeat it.”). Therefore, the Court grants
19 Defendants’ motion based on qualified immunity.

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1 **IV. ORDER**

2 Therefore, it is hereby **ORDERED** Defendants' motions for summary judgment
3 (Dkts. 15, 16) are **GRANTED in part** as stated herein.

4 The Clerk shall close this case and enter judgment for Defendants.

5 Dated this 21st day of July, 2015.

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8 BENJAMIN H. SETTLE
United States District Judge

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